



City of Santa Barbara
Police Department

Memorandum

DATE: February 23, 2012

TO: Fire and Police Commission

FROM: Holly Perea, Police Technician

SUBJECT: Fernando Serrano- Appeal of Denial of Taxi Driver Permit

On November 1, 2011, Mr. Serrano submitted a New Driver Application for a taxicab driver permit to the Santa Barbara Police Department. A review of the applicant's information revealed that although Mr. Serrano listed a 2003 arrest for "DUI," a 2006 arrest for "Drunk in Public," and a 2007 arrest for "Drunk in Public" under the Arrest History section of the application, his Live Scan fingerprint results confirm that Mr. Serrano was actually convicted of the following:

- in 2002: 647(F) PC- Disorderly Conduct: Intoxication Drug/Alcohol
- in 2003: 23152(A) VC- DUI
- in 2004: 415(2) PC- Disturbance by Loud/Unreasonable Noise
- in 2005: 647(F) PC- Disorderly Conduct: Toluene*
- in 2006: 647(F) PC- Disorderly Conduct: Intoxication Drug/Alcohol
- in 2008: 647(F) PC- Disorderly Conduct: Intoxication Drug/Alcohol

* Toluene is a liquid solvent found in paint, paint thinners, and lacquers among other common uses. It can be used as an inhalant drug.

To ensure that applicants do not unintentionally forget to fully complete the Arrest History section of the application, staff at the Police Department verbally verifies with the applicant, in person, that the information in the Arrest History section is true and complete as submitted. On November 1, 2011, at the time Mr. Serrano's application was submitted, the Police Technician Assistant verbally verified with Mr. Serrano that he had no arrest history. Mr. Serrano verbally confirmed that the arrest history was complete as listed. The applicant's verbal confirmation is noted on the application.

Based on the above discovery during the background check, Mr. Serrano's permit application was denied per **Santa Barbara Municipal Code (SBMC) §5.29.190 Denial** "A public vehicle driver's permit shall not be issued to any person for whom any of the following is applicable: **(K) "Has falsified or omitted material and relevant facts on the public vehicle driver's permit application."** It should be noted that the above section does not use the discretionary term "may not be issued," but instead states that a "permit shall not be issued," thereby requiring the Chief of Police to deny the permit under the above-listed circumstances. (See Attachment 1.).

Mr. Serrano was given written notice of this denial on January 17, 2012. On February 1, 2012, Larry Laborde, Certified Family Law Specialist, who is representing Mr.

Serrano in this appeal, filed a letter of appeal with the City Clerk's office (attachment 2) per the requirements of **SBMC §5.29.250 Appeal Procedure** (attachment 3).

RECOMMENDATION:

That the Fire and Police Commission uphold the Police Department's decision to deny this application.

ATTACHMENTS:

1. SBMC §5.29.190 Denial
2. Letter of appeal
3. SBMC §5.29.250 Appeal Procedure

(ATTACHMENT 1)

5.29.190 Denial.

A public vehicle driver's permit shall not be issued to any person for whom any of the following is applicable:

- A. Has been a licensed driver for less than 6 months in the United States.
- B. Does not possess a valid Class C driver's license issued by the State of California.
- C. Is less than twenty-one (21) years of age, unless the applicant possesses a valid Class B driver's license issued by the State of California and is 18 years or older.
- D. Is currently required to register pursuant to Section 290 of the California Penal Code or is required to register in another state or country as a sex offender in a manner comparable to Penal Code Section 290.
- E. Has been convicted of a crime involving moral turpitude, narcotics or dangerous drugs, unless a period of not less than three (3) years shall have elapsed since the date of conviction or the date of release from confinement for such offense, whichever is later.
- F. Has been convicted for driving a vehicle recklessly within the two (2) years immediately preceding application for a permit or renewal.
- G. Has been convicted of operating a vehicle while under the influence of alcohol or drugs two (2) or more times within seven (7) years immediately preceding the application for a permit or a renewal application, or one (1) time within one (1) year immediately preceding application for a permit or renewal.
- H. Has a history of chronic alcohol-related criminal convictions, as evidenced by three (3) or more public intoxication convictions within two (2) years immediately preceding an application for or renewal of permit.
- I. Has two (2) or more moving violation convictions within one (1) year immediately preceding an application for a permit, or three (3) moving violation convictions within one (1) year, or four (4) moving violation convictions within two (2) years for renewal. "Moving violation" conviction shall mean those violations set forth in State Vehicle Code Section 12810.
- J. Has been convicted of a felony or misdemeanor hit and run.
- K. Has falsified or omitted material and relevant facts on the public vehicle driver's permit application.
- L. Has failed to comply with all applicable provisions of Section 5.29.175 of this Chapter. (Ord. 5360, 2005; Ord. 4974, 1996; Ord. 4277, 1984; Ord. 4206, 1983.)

(ATTACHMENT 2)

5.29.250 Appeal Procedure.

A. Appeals to the Board of Fire and Police Commissioners

1. Any decision of the Chief of Police denying a permit, or denying an amendment to a permit, or imposing a suspension or revocation of any owner's or driver's permit shall not become final until fifteen (15) days after the date of transmittal of the written notice to the person affected by such decision, during which period the party to the action may appeal the decision in the manner provided herein at any time prior to the expiration date of the fifteen (15) day period. If no appeal is taken before the expiration of the fifteen (15) day period, the decision of the Chief of Police shall be final.

2. The appeal of any decision shall be in writing signed by the party to the action briefly setting forth the reasons why such decision is not proper, stating an address at which the appellant will receive notices, and filed with the Clerk of the City.

3. Upon filing an appeal, the party to the action shall be entitled to a hearing by the Board of Fire and Police Commissioners at the next regular meeting.

4. The appellant or appellant's representative shall have the right to present his or her case in person.

5. The Board of Fire and Police Commissioners shall consider the case record as well as any statements offered by interested parties. The hearing will be conducted according to administrative rules relating to evidence and witnesses as adopted by the Commission.

6. If the Board of Fire and Police Commissioners refuses to issue, amend or restore a license or an owner's permit, the party to the action or such party's agent shall not file a new application within three hundred sixty five (365) days from the date of final action by the Board of Fire and Police Commissioners.

7. If the Board of Fire and Police Commissioners suspends an owner's permit or a license, the Chief of Police shall determine a period of suspension of not more than thirty (30) days, which is in accordance with the schedule of penalties developed by the Chief of Police.

8. If the Board of Fire and Police Commissioners' action is to grant or restore a certificate or a license, the Commission shall direct the Chief of Police to issue or restore the certificate or license.

B. Appeals to the City Council

1. Appeals to the City Council from the decision of the Board of Fire and Police Commissioners shall be made pursuant to the provisions of Section 1.30.050 of this Code. (Ord. 5360, 2005; Ord. 5136, 1999; Ord. 4206, 1983.)